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4 **UNITED STATES BANKRUPTCY COURT**
5 **DISTRICT OF ARIZONA**
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7 **In the Matter of**

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9 **PROCEDURES GOVERNING**
10 **CHAPTER 13 CASES FILED UNDER**
11 **THE BANKRUPTCY ABUSE**
12 **PREVENTION AND CONSUMER**
13 **PROTECTION ACT OF 2005.**

GENERAL ORDER NO. 95

14 This General Order implements procedures for Chapter 13 cases filed under the Bankruptcy
15 Abuse Prevention and Consumer Protection Act of 2005. The following procedures will apply to
16 all Chapter 13 cases filed on or after October 17, 2005. Local Bankruptcy Rules 2083-1 through
2083-7, 2083-10, 2083-11, and General Orders 68 and 83 are inapplicable to cases in which the
debtor files a petition under Chapter 13 on or after October 17, 2005.

17 **(I) Filing Requirements.**

- 18 (a) If the debtor is not paying the entire fee with the petition, the debtor shall file with
19 the petition an application for payment of the filing fee in installments.
- 20 (b) If the debtor is self employed or engaged in business, the debtor also shall:
21 (1) Complete the portion of the Statement of Financial Affairs for a debtor who
22 is self employed or engaged in business; and
23 (2) File a monthly operating statement for the month in which the debtor filed
24 the petition and ongoing monthly operating reports for the self employment
25 or business. The Chapter 13 trustee may designate the form of the operating
26 statement the debtor must use.
- 27 (c) If a debtor files a petition without the documents required by § 521, the federal or
28 local rules of bankruptcy procedure and, when applicable, paragraph (b), the debtor
shall file the missing documents within the time periods specified in the federal,
interim or local bankruptcy rules of procedure or, if cause exists, file a motion within
that time to obtain an order extending the time to file the documents. Rarely will the
Court grant an extension of time of more than 25 days after the petition date to file
the statement of financial affairs, schedules, original plan, attorney's disclosure of
compensation, the documents required by § 521 or paragraph (b), or a certificate of
service of the plan. If a debtor timely fails to file the documents, then the Court may
dismiss the case without further notice or a hearing, the trustee may upload a
dismissal order, or a party in interest may file a motion to dismiss the case.

(II) Plan.

- (a) In addition to the requirements of 11 U.S.C. § 1322(a), a plan shall have:
- (1) The debtor's estimate of the value of each secured claim, the method of determining the value, (examples such as Kelly Blue Book, appraisal, or debtor opinion) and the amount to be paid on each secured claim;
 - (2) The interest rate to be paid on each mortgage arrearage or other secured claim;
 - (3) A statement that the debtor has filed all tax returns or which returns are unfiled;
 - (4) The signatures of the debtor and debtor's attorney, in the form allowed or required by the ECF interim operating order; and
 - (5) A Local Form 13-2 plan analysis.
- (b) Other than the original plan, a plan filed before entry of an order of confirmation of a plan shall be entitled "Amended Plan." In an amended plan, a debtor needs only to include those terms and conditions that differ from the original plan.
- (c) A plan filed after entry of an order of confirmation of a plan shall be titled as a "Modified Plan." In a modified plan, a debtor needs only to include those terms or conditions that differ from the plan confirmed by the Court and the order confirming plan.

(III) Attorney Fees.

- (a) Unless the attorney has filed or will file a separate fee application, a Chapter 13 plan (original, amended, modified) or a motion for a moratorium (hereinafter the "plan") shall contain an application for payment of compensation for services rendered or to be rendered by the attorney representing the debtor. The plan shall include in its title "Application for Payment of Administrative Expenses" or similar language.
- (b) Any application in the plan for payment of attorney fees separately shall disclose the amount of compensation sought, whether the compensation is a flat, hourly or a contingent fee, and is to include a comprehensive statement of the legal services provided and to be provided. The application also may include a list of flat fee services which may be performed by debtor's counsel post-confirmation where additional compensation is sought. The application must state the amount of the flat fee and specify what service is to be rendered for the debtor. The application need not state the actual time expended or to be expended, but shall provide generally the services performed, promised or contemplated.
- (c) When the Court dismisses the case before confirming a plan, and the deadline for creditor objections has passed, the dismissal order may include approval of the attorney fees or debtor's counsel may upload an order approving the fees.
- (d) The fees sought in the plan must be consistent in amount and description with the attorney's F.R.B.P. 2016(b) disclosure statement. The disclosure statement shall have a comprehensive narrative explanation of the services rendered or to be rendered, and the expenses incurred and to be incurred.
- (e) Absent disclosure of additional attorney fees post-confirmation in the debtor's plan as specified in paragraph (b), or except for payment of a retainer by a pro se debtor, a debtor's attorney shall not accept any payment for fees without obtaining a Court order authorizing the fees and specifically permitting direct payment of those fees. The debtor's attorney immediately must file an amended Rule 2016(b) statement upon receipt of any additional funds paid post-petition.
- (f) Nothing in this General Order prohibits a debtor's attorney from filing a separate fee application or the Court from ordering the attorney to file a separate fee application pursuant to Rule 2016(b).

1 **(IV) Plan Payments.**

2 The trustee may require the debtor to make plan payments in a specific form, such as
3 certified funds, and the address to which the debtor must send the payments.

4 **(V) Adequate Protection Payments.**

5 (a) A plan shall propose monthly adequate protection payments to creditors secured by
6 depreciating personal property to be included in the plan payments, beginning with
7 month one. Unless the Court orders otherwise, the debtor shall not make adequate
8 protection payments directly to any creditor or reduce the amount of the plan
9 payments made to the trustee for any amount attributable to the adequate protection
10 payments.

11 (b) The trustee is authorized to make pre-confirmation adequate protection payments to
12 one or more secured creditors if:

- 13 (1) The plan provides for payment of the adequate protection payments;
- 14 (2) The debtor's Schedule D discloses the debt and describes the collateral;
- 15 (3) The creditor has filed a secured proof of claim, with documentation
16 evidencing a perfected security interest, that asserts a purchase money
17 security interest in the personal property;
- 18 (4) The debtor or creditor sends a letter to the trustee requesting payment of
19 pre-confirmation adequate protection payments set forth in the plan along
20 with a copy of the secured proof of claim; and
- 21 (5) The collateral is depreciating and the amount of the adequate protection
22 payments approximates the depreciation, which for motor vehicles is
23 generally in the range of 1% of the value of the vehicle per month.

24 (c) Payment of pre-confirmation adequate protection payments is without prejudice to
the secured creditor's right to object to the plan, or seek a determination as to the
value of the secured claim or amount necessary to provide adequate protection.

(d) The trustee is entitled to take the percentage fee from all adequate protection
payments received or collected. To the extent the trustee has funds on hand, the
trustee shall begin making pre-confirmation adequate protection payments if the
trustee receives the letter requesting pre-confirmation more than ten business days
before the trustee's scheduled monthly distribution; otherwise the trustee will
distribute adequate protection payments beginning with the next month's
distribution.

If the debtor has paid an insufficient amount of money to pay adequate protection
payments in full, the trustee shall pay the creditors in pro rata amounts.

(e) If the trustee has not made pre-confirmation adequate protection payments, the
trustee promptly shall disburse the adequate protection payments after the Court
confirms the plan. If the Court dismisses the case before confirmation of a plan, the
trustee will pay the creditor any adequate protection payments due and owing from
funds received by the trustee under § 1326(a)(1)(A), less the statutory trustee's fee,
then allowed administrative expenses. If the trustee is required to pay adequate
protection payments to more than one creditor but the trustee has an insufficient
amount of money to pay them in full, the trustee shall pay the creditors in pro rata
amounts.

25 **(VI) Serving the Plan or Motion for Moratorium.**

26 (a) The debtor shall serve on creditors, as required by § 342 and F.R.B.P. 7004 and
27 9014, the plan (original, amended, modified) and plan analysis, or any motion for a
28 moratorium, and a notice containing the appropriate deadlines set forth below. A
debtor must serve a motion for a moratorium in the same manner as a plan.

- (b) A debtor needs only to serve nonmaterial changes in an amended or a modified plan on the trustee and those creditors affected by the changes. To be regarded as nonmaterial, the modification must not delay or reduce the dividend to be paid on any claim or otherwise modify the claim of affected creditor's consent. A material modification is considered a plan amendment or modification and must be noticed accordingly.
- (c) The notice served with a plan or motion for a moratorium must be in a form that complies with this General Order and is approved by the chapter 13 trustee. Noticing out the plan or a motion for a moratorium without the notice is insufficient.
- (d) If the debtor is unrepresented by counsel, the debtor is required timely to notice any plan or motion through the trustee. The trustee will direct how the debtor is to do the noticing and will select, with the approval of the United States Trustee, the mailing/copying service used by the debtor. The debtor shall pay the cost of this noticing.
- (e) Unless the Court for cause orders otherwise, a debtor must accomplish service as follows:
- (1) For the original plan, the debtor must serve it within five business days of filing it or within 25 days after the petition date, whichever is earlier.
 - (2) For an amended plan or pre-confirmation motion for a moratorium, the debtor must serve it within five business days after filing it.
 - (3) For a modified plan or post-confirmation motion for a moratorium, the debtor must serve it within five business days of filing it.
- (f) If the debtor fails timely and properly to serve the original plan, within 25 days of the petition date, the trustee, in the trustee's discretion, may continue the meeting of creditors for a sufficient period for the debtor to notice out the plan and for creditors to receive at least 25 days of notice. The debtor shall contact the trustee for the date and time of the continued meeting of creditors. Using an updated master mailing list, the debtor shall notice out the continued meeting to all parties entitled to notice and file a certificate of service within three business days after receiving the continued date and time from the trustee. Also, within the same period, the debtor shall notice out the plan and the notice containing the deadline for creditor objections. If the debtor is pro se, the noticing of the plan and continued meeting of creditors may be combined. The new deadline for creditor objections shall be 10 calendar days after the date of the continued meeting of creditors or 25 days after service, whichever is later.
- If the Court dismisses the debtor's case before the debtor attends a meeting of creditors and then reinstates the case, the debtor shall notice or re-notice out the plan to creditors and file a certificate of service within three business days of receipt of the rescheduled meeting of creditors. The deadline for creditor objections shall be 10 days after the date of the meeting of creditors or 25 days after service, whichever is later.
- (g) Except as otherwise provided in this General Order, after the debtor serves any plan, motion for a moratorium, continued meeting of creditors, or reinstatement order, the debtor shall file a certificate of service within five business days. The certificate of service may be incorporated into the notice. The debtor shall attach a copy of the document being noticed out, the mailing list used, and the notice mailed to the certificate of service. Instead of attaching the document noticed out, the certificate and docket entry may contain the appropriate reference to the ECF docket number for that document. The debtor must use a master mailing list downloaded from the Court within five business days before the noticing. The mailing list attached to the certificate of service must contain the PACER/ECF information.
- (h) If the debtor fails timely to file and properly serve any plan or motion for a moratorium, or timely file a certificate of service, the trustee may upload, and if uploaded shall serve, a proposed dismissal order and, after 10 days, the Court may dismiss the case without further notice or a hearing.

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2 **(VII) Creditor Objection to Plan or Motion for Moratorium.**

- 3 (a) Time for filing creditor objection:
4 (1) For an original or amended plan, or pre-confirmation motion for a
5 moratorium, the deadline for a creditor to file an objection to confirmation
6 is 10 calendar days after the date set for the meeting of creditors or 25 days
7 after service, whichever is later.
8 (2) For a modified plan or post-confirmation motion for a moratorium, the
9 deadline for a creditor to file an objection to confirmation is 25 days after the
10 date of service.
11 (b) The failure of a party in interest timely to file an objection to confirmation of a plan
12 or the granting of a motion for a moratorium shall constitute acceptance of the plan
13 or motion pursuant to 11 U.S.C. § 1325(a)(5)(A) and a waiver of the requirement that
14 the Court hold a confirmation hearing within 45 days after the date of the meeting
15 of creditors. Notice of the waiver of the 45-day confirmation hearing requirement
16 and acceptance of the plan due to a creditor's failure timely to object shall be
17 conspicuous in the notice of date to file objections served on all creditors.
18 (c) A secured creditor who disagrees with the valuation of the creditor's secured claim
19 in the plan and who files an objection, shall state in the objection the creditor's
20 estimate of the value of the collateral, the method of determining the value, and the
21 amount of claim that is secured. Upon receipt of the creditor's objection, the debtor
22 shall make the collateral available to the creditor for inspection and appraisal.

23 **(VIII) Trustee's Recommendation/Objection.**

- 24 (a) For any plan or motion for a moratorium, the trustee shall file a recommendation/
25 objection by 25 days after the date set for the creditor objections.
26 (b) The debtor shall comply with any requirements stated in the trustee's
27 recommendation/objection requesting documentation or information, to move the
28 case procedurally toward confirmation of the plan, or to pay any delinquent plan
payments. Within 30 days after the trustee files the recommendation/objection, the
debtor shall comply with the trustee's requests or file an objection to the
recommendation/objection and set the matter for hearing. If the debtor timely fails
to comply, the trustee may upload, and if uploaded shall serve, a proposed dismissal
order and, after 10 days, the Court may dismiss the case without further notice or a
hearing.
(c) If the trustee objects to the fees requested by debtor's counsel, counsel shall provide
to the trustee a statement reflecting what work was done for the debtor and the time
spent on each task. The statement may be as time sheet summaries.
(d) Rather than file a recommendation/objection, if the debtor makes no plan payments
by the deadline for the trustee's recommendation set above, the trustee may upload,
and if uploaded will serve, a proposed order dismissing the case and, after 10 days,
the Court may dismiss the case without further notice or a hearing.

29 **(IX) Confirmation Hearing or Hearing on Objection.**

- 30 (a) Unless the Court orders otherwise, a hearing on a creditor's objection is not a hearing
31 requiring attendance of the trustee.
32 (b) A creditor who timely files an objection to plan confirmation may request a hearing
33 on the objection from the Court prior to the expiration of the last date for filing an
34 objection to plan confirmation. The failure of a creditor timely to request a hearing

will constitute a waiver of the requirement that the Court hold a confirmation hearing within 45 days after the date of the meeting of creditors.

- (c) Anytime after expiration of the time for a creditor to object, the debtor, trustee, or creditor may request the Court set a confirmation hearing rather than a hearing on an objection. Any order or notice setting a confirmation hearing must clearly state whether the debtor, debtor's attorney, trustee, and any creditor with an unresolved objection must appear at the hearing.

(X) Confirmation of Plan or Granting of Motion for Moratorium.

The Court may confirm a plan or grant a motion for a moratorium without a confirmation or other hearing if:

- (a) There are no timely objections filed by creditors and the trustee recommends confirmation or approval; or
(b) The trustee and all objecting creditors agree to a stipulated order.

(XI) Tax Returns.

Unless the Court grants a motion for an extension of time, if a debtor fails to comply with § 521(e) or (f), or § 1308(a), any party may file a motion to dismiss. Alternatively, the trustee may upload, and if uploaded shall serve, a proposed dismissal order and, after 10 days, the Court may dismiss the case without further notice or a hearing.

(XII) Order Confirming Plan or Granting Motion for Moratorium.

- (a) Unless the Court specifically provides otherwise in a separate order, any order confirming a plan or granting a motion for a moratorium must bear the trustee's approval.
(b) The debtor must review the Court's claims docket and claims filed with the Court before submitting a proposed order to the trustee. To keep parties informed as to the status of confirmation, when submitting a proposed order to the trustee, the debtor also shall file a notice of submitting proposed order confirming plan.
(c) The Chapter 13 trustee shall approve and upload, or return to the debtor, any proposed stipulated order confirming a Chapter 13 plan within 30 days of receipt of the proposed order, unless cause is shown by the trustee. If the trustee returns the proposed order to the debtor, then the trustee shall provide notice of the return on the docket. Unless the Court orders or the trustee requests otherwise, the trustee shall be the one who uploads a proposed order confirming a plan or granting a motion for a moratorium.
(d) The Chapter 13 trustee shall commence disbursements pursuant to the confirmed plan within 60 days after entry of an order confirming the plan, unless cause is shown by the trustee.
(e) When the trustee determines that the debtor has completed the plan, the trustee will file a notice of the completed plan as soon as practicable.

(XIII) Trustee Motion to Dismiss.

- (a) A motion to dismiss filed by the trustee because the debtor is delinquent in one or more plan payments may provide for dismissal of the case unless, within 30 days of the trustee filing the motion, the debtor does one of the following:
(1) Pays the trustee the amount of the delinquent plan payments;
(2) If the debtor is eligible, files with the Court, and serves a copy on the trustee, a notice of conversion to Chapter 7; or
(3) Files and serves a motion for a moratorium of the delinquent plan payments.

- (b) If the debtor timely fails to do one of the acts in paragraph (a), the trustee may upload, and if uploaded shall serve, a proposed order dismissing the case and, after 10 days, the Court may dismiss the case without further notice or a hearing.

(XIV) Debtor's Objection to Proposed Dismissal Order.

If the debtor files an objection to a proposed dismissal order, the debtor must state what issues are resolved, what issues remain, and what has been done to move the plan toward confirmation. After filing such objection, the debtor timely must get the matter set for hearing and notice out the hearing.

(XV) Reinstatement of Dismissed Cases.

If the Court dismisses a case on motion of the trustee or pursuant to Section VIII, the Court may grant a motion to reinstate the case without a hearing if the trustee approves the proposed reinstatement order. If the trustee does not approve the order, the debtor may set the matter for hearing. The Court may set a hearing on the motion to reinstate on request of an interested party who had joined the trustee's dismissal motion.

(XVI) Priority or Secured Claims.

A claimant filing a secured or priority claim must file it electronically.

(XVII) Stay Relief to Secured Creditor.

When a stay relief order unconditionally permits a creditor to foreclose or repossess its collateral, the trustee shall cease making payments on the creditor's secured claim if the trustee received the order more than five days before a monthly plan distribution, unless the order granting stay relief provides otherwise. The trustee may continue distributions to other creditors.

(XVIII) Sale of Property and Incurring New Debt.

- (a) Pre-confirmation Sale or Incurring New Debt.
If the Court has not confirmed a plan, a debtor must file a motion for approval to sell property or incur new debt.
- (b) Post-Confirmation Sale or Incurring New Debt.
- (1) Personal Property. If the trustee endorses the order, the Court may approve an application, without notice or hearing, by the debtor to finance the purchase of a motor vehicle or other personal property. The debtor's application and the trustee's approval are their certification to the Court that:
- (A) The debtor is current on plan payments;
- (B) The debtor is not in default under the terms of the Chapter 13 plan;
- (C) Schedules I and J (whether original or amended) were filed within the prior 30 days, with income verification provided to the trustee, and the Schedules show that the debtor has the ability to pay all future plan payments and projected living and business expenses, as well as repay the new debt;
- (D) The new debt is a single loan to purchase a motor vehicle or other personal property that is necessary for the maintenance or support of the debtor or a dependent of the debtor or, if the debtor is self employed or engaged in business, is necessary for the continuation, preservation, and operation of the debtor's business;

- (E) The only security for the new debt will be the property to be purchased by the debtor; and
- (F) The new debt is a reasonable amount.
- (2) New Home Loans. If the trustee consents, the Court may approve, without notice or hearing, an application by the debtor to finance the purchase, or enter into a new lease, of residential real property. The debtor's application and the trustee's approval are their certification to the Court that:
- (A) The debtor is current in plan payments;
- (B) The debtor is not in default under the terms of the Chapter 13 plan;
- (C) Schedules I and J (whether original or amended) were filed within the prior 30 days, with income verification provided to the trustee, and the Schedules show that the debtor has the ability to pay all future plan payments and projected living and business expenses, as well as repay the new debt;
- (D) The new debt is a single loan incurred to purchase a residence that is necessary for the maintenance or support of the debtor and debtor's family;
- (E) The only security for the new debt will be the residence to be purchased by the debtor; and
- (F) The monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance, association fees, and bonds and other assessments) will not exceed the greater of the debtor's current such monthly purchase or rental payment, or a reasonable amount.
- (3) Refinance of Existing Home Loans. If the trustee endorses the order, the Court may approve, without notice or hearing, an application by the debtor to refinance existing debt encumbering the debtor's residence, provided all creditors secured by the residence have consented or have received notice and an opportunity to object. The debtor's application and the trustee's approval are their certification to the Court that:
- (A) The debtor is current in plan payments;
- (B) The debtor is not in default under the terms of the Chapter 13 plan;
- (C) Schedules I and J (whether original or amended) were filed within the prior 30 days, with income verification provided to the trustee, and the Schedules show that the debtor has the ability to pay all future plan payments and projected living and business expenses, as well as repay the new debt;
- (D) The new debt is a single loan incurred only to refinance existing debt encumbering the debtor's residence;
- (E) The only security for the new debt will be the debtor's existing residence;
- (F) All the creditors with liens and security interests encumbering the debtor's residence will be paid in full from the proceeds of the new debt and in a manner consistent with the Chapter 13 plan; and
- (G) The monthly payment (the principal and interest payment on account of the new debt plus all impounds, taxes, insurance, association fees, bonds and other assessments) will not exceed the greater of the debtor's current such monthly payments on the existing debts being paid, or a reasonable amount. The Court will not approve motions to obtain secured credit without notice and a hearing pursuant to § 364(d).

(4) Sale of Property. If the trustee endorses the order, the Court may approve, without notice or a hearing, an application by the debtor to sell real or personal property with a value of \$1,000 or more, other than in the ordinary course of business, provided all creditors secured by the property have consented or have received notice and an opportunity to object. The debtor's application and the trustee's approval are their certification to the Court that:

- (A) The sale price represents a fair value for the subject property;
- (B) All creditors with liens and security interest encumbering the subject property will be paid in full before or simultaneously with the transfer of title or possession to the buyer;
- (C) All costs of sale, such as escrow fees, title insurance, and broker's commissions, will be paid in full from the sale proceeds;
- (D) The sale price is all cash;
- (E) The debtor will not relinquish title to or possession of the subject property before payment in full of the purchase price; and
- (F) The sale is an arm's length transaction. "Trading in" a vehicle as part of the purchase price for a new vehicle may comply with the requirements of subparagraphs (D) and (E). The Court will not approve an application to sell property without notice and a hearing pursuant to § 363(f).

(c) Incurring Other New Debt and Transfers of Debt.

If the trustee will not give the consent allowed by paragraph (b), or if the debtor wishes to incur new debt or transfer property on terms and conditions other than provided for in paragraph (b), the debtor may file an application, serve it on the trustee and those creditors who are entitled to notice, set the hearing on the Court's calendar with the notice required by F.R.B.P. 2002 and Local Bankruptcy Rule 9014-1, and shall file a certificate of service within seven business days.

IT IS SO ORDERED.

Dated: October 12, 2005

/s/
Honorable Redfield T. Baum, Chief Judge

/s/
Honorable George B. Nielsen, Jr.

/s/
Honorable Sarah Sharer Curley

/s/
Honorable James M. Marlar

/s/
Honorable Charles G. Case II

/s/
Honorable Randolph J. Haines

/s/
Honorable Eileen W. Hollowell